Supreme Court, U.S.
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No. 04-827

In The

Supreme Court of the United States

JAMES CRAIG STEWART &
BLANCHE LEEANN STEWART,

Petitioners,

v.

LARRY MACK SMITH, ELIZABETH HAWK,
Alabama Department of Human Resources,
MARY HAMILTON, AMANDA STAGGS, & JAMY POSS,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Alabama

PETITION FOR A WRIT OF CERTIORARI

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Petitioners Pro Se

QUESTION PRESENTED

1. Whether the State of Alabama, its agencies and employees are entitled to immunity from suit in cases where the parental rights to the companionship, care, custody, and management of his or her children are stripped without due process as guaranteed by the Fourteenth Amendment to the Constitution?

PARTIES TO THE PROCEEDING BELOW

The petitioners in this court, James Craig Stewart and Blanche LeeAnn Stewart, are a married couple who were the plaintiffs in the Circuit Court of Lauderdale County, Alabama and were the Appellants in the Supreme Court of Alabama.

The respondents in this court are Larry Mack Smith, Elizabeth Hawk, Alabama Department of Human Resources (DHR), Mary Hamilton, Amanda Staggs, and Jamy Poss. The positions of the respondents are, in the same order as above, Lauderdale County Circuit Judge, Family Division, Lauderdale County Juvenile Probation Officer, a state agency of the State of Alabama, an employee of Alabama DHR, an employee of Alabama DHR, and an attorney appointed as Guardian Ad Litem by Hawk, Staggs, and Smith. These parties were all defendants in the Circuit Court of Lauderdale County and Appellees in the Supreme Court of Alabama.

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The Supreme Court of Alabama opinion that the petitioners ask this Court to review is *James Craig Stewart, Sr. and Blanche LeeAnn Stewart v. Larry Mack Smith et al.*, 1030818 (Ala. Supreme Court 2004), which is reproduced in the appendix along with the overruling of the application for a rehearing. The Lauderdale County, Alabama Circuit Court's Final Order (CV-03-480, Lauderdale County Circuit Court), which combined the Respondents' Motions to Dismiss with Motions for Summary Judgment is also reproduced in the appendix.

JURISDICTIONAL BASIS

This petition asks the Court to review the August 13, 2004, judgment of the Supreme Court of Alabama, with no opinion. The Supreme Court affirmed the decision of the Circuit Court of Lauderdale County, Alabama, decision of January 15, 2004. The Supreme Court of Alabama subsequently overruled the petitioners' request for a rehearing on September 17, 2004, with no opinion.

The petitioners included allegations of denial of their constitutional rights in the original petition filed in the Circuit Court of Lauderdale County, Alabama, on July 30, 2003. These allegations have remained central to the petitioners case throughout their appeal to the Supreme Court of Alabama, application for rehearing, and appeal to this Court.

If the Court grants this Petition, it will have jurisdiction pursuant to 28 U.S.C. § 1257.

STATUTE INVOLVED IN THE CASE

The statute involved in this case is the Fourteenth Amendment to the U.S. Constitution as stated:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

The Stewarts are residents of Lauderdale County, Alabama, and are the natural parents and legal guardians of James Craig Stewart, Jr. The Stewarts were married on February 05, 1978, and continue to be married at this time. The son mentioned above is a result of this union along with a daughter who still resides with the Stewarts. On August 07, 2004, without so much as a phone call, Jamy Poss was appointed Guardian Ad Litem at the direction of Elizabeth Hawk (Lauderdale County Juvenile Probation Officer) and Amanda Staggs (Alabama DHR Caseworker) for the minor son. On August 10, 2001, Jamy Poss, after an ex parte hearing with Larry Mack Smith, secured and served an order forcing the Stewarts to relinquish all of their son's belongings and allow him to live with his grandmother in Mississippi. No hearing, with the Stewarts present, has ever occurred. The Stewarts brought an action in Lauderdale County Circuit Court against the above named and the

supervisor of Amanda Staggs, Mary Hamilton, for their denial of the Stewarts Fourteenth Amendment rights in the removal of their son from their custody. Also included as defendants in the complaint was the Alabama Department of Human Resources, and Larry Mack Smith. The Circuit Court ordered that the defendants combine their Motions to Dismiss with Motions for Summary Judgment. The Circuit court then granted Summary Judgments for the defendants. The Stewarts appealed to the Supreme Court of Alabama where the lower court was affirmed with no opinion. The Stewarts then filed for a rehearing with the Supreme Court of Alabama which was overruled with no opinion.

REASONS FOR GRANTING THE WRIT

I. THE CONDITIONS FOR IMMUNITY TO BE REMOVED FROM GOVERNMENTAL AGENCIES ARE SPELLED OUT IN *HOPE V. PELZER*.

A. The allegations of the complaint must be assumed to be true and plead a cognizable violation of the Constitution.

The Supreme Court of Alabama failed to take the proper standards of review as stated in *Hope v. Pelzer*, 536 U.S. 730 (2002), into consideration in their deliberations when they affirmed the lower court's decision to combine the respondents' motions to dismiss with motions for summary judgment and effectively granted the motions to dismiss based upon the improper standards of review. The allegations of the petitioners, when assumed to be true, do in fact plead a violation of the petitioners' Fourteenth Amendment rights. The allegations are that the respondents collectively removed the minor child from the custody of the petitioners.

The Stewart's minor child, James Craig Stewart, Jr. was placed on probation after being cited for juvenile DUI on March 11, 2001. Lauderdale County Juvenile Probation Officer, Elizabeth Hawk was assigned as his probation officer.

Juvenile Probation Officer (JPO) Elizabeth Hawk told the petitioners on more than one occasion that she did not like the manner in which they were raising their son and that she did not want them to send their son to military school. The minor child was sent to military school for the summer semester and was to stay with his grandmother in Mississippi, between summer school and the fall semester, a period of two weeks. During this two week period, clothing and money was provided for the minor child by the petitioners. A copy of the cancelled check provided for the minor child is reproduced in the appendix at 18. When the child got to his grandmother's residence, he convinced JPO Hawk, his grandmother, and DHR worker Amanda Staggs that he should stay with his grandmother for the next school year. JPO Hawk, without so much as a phone call to anyone, had a Guardian Ad Litem appointed, Jamy Poss. This was accomplished on August 07, 2004. In her affidavit, JPO Hawk simply states that "following our procedure", without any documentation or proof of investigation, she proceeded to have Jamy Poss appointed as Guardian Ad Litem. On August 10, 2004, Mr. Poss went to the Family Court Judge, Larry Mack Smith, and in an ex parte meeting discussed the case with the Judge. Mr. Poss states that he then drafted the "Emergency Motion" shown at App. 8. He then secured the subsequent "Order", App. 9.

The appointment of a Guardian Ad Litem without any investigation and the subsequent securing of a Court Order

to remove the minor child's belongings so he might reside with a relative, without the permission and consent of his natural parents and guardians is clearly an usurpation of the parental rights of the petitioners as guaranteed under the Fourteenth Amendment to the U.S. Constitution.

B. The respondents' actions must violate clearly established statutory or constitutional rights of which a reasonable person would have known.

The rights of parents to raise their children in the manner in which they determine proper has been held by this Court on numerous occasions to be a clearly established right under the Fourteenth Amendment to the U.S. Constitution.

As this Court so succinctly stated in *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981), "This Court's decisions have now been made plain beyond the need for multiple citation that a parent's desire for and right 'to the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference, and absent a powerful countervailing interest, protection."

Further in *M. L. B. v. S. L. J.*, ___ U.S. ___ (1996) "Choices about marriage, family life, and the upbringing of children are among the associational rights this Court has ranked as 'of basic importance in our society', Boddie, 401 U.S., at 376, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or respect." "[T]hat a father's interest in the 'companionship, care, custody, and management' of his children is 'cognizable and substantial,'" is stated in *Quillon v. Walcott*, 434 U.S.

246 (1978). *Quillon v. Walcott* goes further in stating "We have all recognized on numerous occasions that the relationship between parent and child is constitutionally protected. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 231-233 (1972); *Stanley v. Illinois, supra*; *Meyer v. Nebraska*, 262 U.S. 390, 399-401 (1923). 'It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder.' *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). And it is now firmly established that 'freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.' *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974)." These citations undeniably show parental rights to be among those which are Constitutionally protected.

As these respondents are professionally trained employees of the State of Alabama, in the business of child welfare, the reasonable inference would be that they are all cognizant of their actions as being in conflict with the Fourteenth Amendment of the Constitution. More specifically, Jamy Poss, Guardian Ad Litem, is a practicing attorney who was at the time, and is currently, in good standing with the State of Alabama. These parties represent the single group of people in the State of Alabama that should be most familiar with the Constitutional provisions of this case.

C. The respondents failed to comply with the reasonable efforts requirements of Public Laws 96-272 and 105-89.

It is plainly stated in Public Law 96-272, June 17, 1980, Section 471. "(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for the removal of the child from his home, and (B) to make it possible for the child to return to his home;" The State must make "reasonable efforts" to resolve the perceived problem prior to removal of a child from his home. This concern was so important to the Congress that it was restated in Public Law 105-89, November 19, 1997, **Title I – REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE AND ADOPTION PLACEMENTS**, Section 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT. (a) IN GENERAL – Section 471(a)(15) OF THE Social Security ACT (42 U.S.C. 671(A)(15) is amended to read as follows: "(15) provides that – "(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be of paramount concern;" (B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families – (I) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home."

The acts of these respondents show malice and the fact that their acts were calculated and intentional, not acts of professionals desiring to assist a family in need or

to provide the best possible outcome for the child. None of the respondents has provided any explanation as to why they did not take the time to make one simple phone call to the petitioners to ascertain the facts. As Random House Webster's Dictionary defines emergency as "a sudden, urgent, usually unexpected occurrence requiring immediate action." Jamy Poss was appointed Guardian Ad Litem on August 07, 2001, and his affidavit shows no activity on his appointment until August 10, 2001. It is highly suspect to even a casual observer that any real emergency ever existed. When it is taken into consideration that his first act was on August 10, 2001, and that act was an ex parte hearing with the Judge on how to word the "Emergency Motion", his motives must be questioned. It also should not be considered a coincidence that August 10, 2001, was a Friday and the "Order" was served at 4:00PM. At the time of his actions in this case, Mr. Poss had been in the private practice of law for less than six months and the reasonable inference is that he relied heavily on assignments of this nature for his financial survival and was quick to perform any duties required of him.

The Juvenile Probation Office and the office of Larry Mack Smith, went out of their way to support the petitioners' complaint by submitting affidavits of all Employees confirming that they never had any contact with the petitioners.

No reasonable efforts were made as required by Public Laws 96-272 and 105-89.

D. In a separate child welfare case in Florida, *Omar v. Lindsey*, 334 F.3d 1246 (11th Cir. 2003), the *Hope v. Pelzer* standards were utilized to affirm the removal of qualified immunity.

"The Supreme Court has held that a qualified immunity analysis consists if two distinct strands. First the Court must evaluate the complaint to determine if its allegations, assuming they are true, plead a cognizable violation of the constitution. If this is answered in the affirmative, the Court pursues the second inquiry, which is to establish if the right in question was clearly established." *Omar v. Lindsey*, 334 F.3d 1246 (11th Cir. 2003).

To reiterate from the above discussion, this analysis has been proven.

E. Regardless as to how the respondents characterize the "Emergency Motion" and "Order" of August 10, 2001, it's intent and design was to deny the petitioners' right to the companionship, care, custody, and management of their child.

"On the 10th day of August, 2001, I went to see Judge Larry Mack Smith, the presiding Juvenile Court Judge, and discussed the situation with him hypothetically. I then drafted and filed an Emergency Motion For Order Concerning Retrieval of Child's Clothing and Personal Property. The Judge Granted the motion and signed an Order to that effect." This is a direct quote from a letter written by Jamy Poss, Guardian Ad Litem, to the Alabama State Bar in response to a complaint filed by the petitioners. The same scenario was retold in Mr. Poss' affidavit as follows: "After consulting with Lauderdale County Circuit Judge,

Larry M. Smith, I filed an emergency motion for an order to allow retrieval of my client's clothing and other items." Again, the reasonable inference is there was something more than a simple motion and order if an ex parte meeting and ex parte hearing are required to accomplish the desired result.

"August 10, 2001, Craig (Petitioners' minor son) and his Uncle came in. They were meeting Mr. Poss later in the day. Mr. Poss was going to the Stewart home to obtain the items that Craig needed. DHR worker, Amanda Staggs, called. She requested an update on this. I called Mrs. Stewart to check on her. She has MS and all of this has placed additional stress on her. I inquired as to her feelings about the situation. She sounded okay, but expressed disappointment in her mother's behavior of taking Craig. This really confused me as I thought that the plan to send Craig to his Grandmother was devised by her and presented to DHR. . . . On August 13, 2001, . . . This was the last contact I can remember having with either Mr. or Mrs. Stewart directly. . . . On August 28, 2001, Mr. Poss called. He had spoken with Craig. Craig was now enrolled in high school, and had made the football team. He also believes the State of Mississippi will go after child support because Mrs. Long has added Craig to her food stamps." The above quotations are direct from the sworn affidavit of JPO Elizabeth Hawk. The notes of August 10, 2001, failed to address the fact that the phone call she initiated happened to be approximately twenty minutes before the petitioners were served with the order secured by the Guardian Ad Litem. She further relates she was confused, however, refused to even attempt to resolve confusion she had. "Due process requires that the State support its allegations by at least clear and convincing evidence." *Santosky v. Kramer*, 455 U.S. 745 (1982). The reasonable

inference from the sworn affidavit of JPO Hawk is that she was calling just to verify that the Stewarts were home so the order could be served. And, when questions were raised regarding the action she was directing, she refused to resolve her "confusion" before proceeding, as is required by *Santosky v. Kramer*. Additionally, JPO Hawk considered the action of the Guardian Ad Litem as a custody order as she clearly states she never spoke with the Stewarts after August 13, 2001, even though their son was still under probation and according to the probationary terms, she must work with the legal guardian to resolve the probation. Finally, the State of Mississippi recognized the grandmother as legal custodian of the minor child as they placed him on the food stamp program based upon his grandmother's income. He was also subsequently placed on the Medicaid rolls based upon the same criteria. The Stewarts have never applied for either program and did not at the time nor at this time qualify for either program.

In the ultimate act of disrespect for the Stewart family, the respondents succeeded in having the children's benefits from Mrs. Stewart's Social Security payment sent to their son, including their daughter's portion also. This was accomplished without any discussion with Mrs. Stewart. Mr. Poss describes his actions as follows:

> "On the 10th day of September, 2001, I received a telephone call from my Client's Mother [sic]. Mrs. Stewart stated that she wanted me to contact Social security [sic] and have my client's disability check split so that his sister still residing in the home could get her share of the check. I contacted Social Security and was informed that my Client [sic] had been receiving a disability check based upon his mother's disability. The parents

> had only listed the one child, my client, when they applied for disability and had received the full amount for that child. I informed Social Security of my Clients [sic] new address, since the check had been coming to the parents' residence and was told by Social Security that if my client did nothing that the parents' claim would be processed in a few days. However, if my client would agree the money would go ahead and be divided immediately. I contacted my client who was living with his grandmother in Mississippi and informed him of the situation. My client stated that the disability check would be his only means of support other than his grandmother and he would rather do nothing."

The Social Security Administration saw the order of August 10, 2004, as a custody order as the Stewarts explained to them that their son was living against their will in Mississippi. Even though the respondents suggest that they did not take custody, the Social Security Administration saw Mr. Poss and the grandmother as legal custodian of the minor child. The actions of Mr. Poss resulted in the Stewart's daughter not receiving benefits until January, 2002. The back payments were made in March, 2002. And then the Social Security Administration attempted to collect the over-payment from the Stewarts, as the minor son had received his sister's payment for four months.

In the same letter, Mr. Poss went further to display the fact that he considered the August 10, 2001, "MOTION" and "ORDER" to be a custody order in disguise. As he states, "I have had no further contact with the parents, but have had regular contact with My Client [sic], Mrs. Long (his Grandmother) [sic], the Juvenile Probation

Officer and with The Lauderdale County Department of Human Resources." This statement by Mr. Poss shows his lack of respect for the Stewart family as he speaks with all parties except the natural parents "regularly", however makes no attempt to reconcile the family as required by Public Laws 96-272 and 105-89.

Mr. Poss' actions are also in direct conflict with Ala. Code 1975, § 12-15-1.1 which states as follows:

> "the following goals have been established for juvenile court: 1) To preserve and strengthen the child's family whenever possible, including improvement of the home environment; 2) To remove the child from the custody of his or her parents only when it is judicially determined to be in his or her best interest for the protection of the public; 3) To reunite the child with his parents as quickly and safely as possible when the child has been removed from the parent's custody; . . . 8) To achieve all of the foregoing goals in the least restrictive setting necessary with the preference at all times for preservation of the family and the integration of parental accountability and participation in treatment and counseling programs."

When Mr. Poss was assigned duties of Guardian Ad Litem, his duties were to assist the family as a unit if he perceived problems, not just force the will of DHR, JPO, and the child's grandmother upon the natural parents. His intent is very clear from his own written word that he had no desire to assist the Stewart family, but to do the will of his real client, the State of Alabama, through DHR and JPO.

II. DOCUMENTATION OF THE RESPONDENTS' ACTIONS IN OTHER INSTANCES SHOW CONCERN BY THE FEDERAL COURT AND THE ALABAMA ADMINISTRATIVE OFFICE OF COURTS THAT THE RESPONDENTS HAVE OVERSTEPPED THEIR AUTHORITY ON PRIOR OCCASIONS.

The Administrative Office of Courts, directly under the control and supervision of the Supreme Court of Alabama, in the fax memo reproduced at App. 15-17, assisted the Stewarts in getting to examine the records. JPO Hawk and her supervisor, Bill Lovelace, had previously refused the Stewarts the right to examine the official record as required by Alabama Law. They still refused to allow copying of the record. This very clearly shows that if the Juvenile Probation Office was willing to disregard Alabama State Law, there is no reason to think they would not be guilty of the allegations of this complaint.

In A Status Report on Implementation of the R. C. Consent Decree, December 2003, *R. C. v. Fuller*, Civil Case 880-d-1170-N, U.S. District Court, Middle District of Alabama, the Federal Court Monitor, Ivor Groves, which is reproduced at App. 11-14, states there is reason for concern as converted counties have not sustained the standards of the consent decree. He further displays concern for the actions of the Lauderdale County DHR as having notable increases in the number of children in out-of-home care since year of conversion, with an increase of 23% since they converted to standards of the consent decree. Again, the reasonable inference is, if there is a documented 23% increase in removal of children from their homes and the Court Monitor suggests that it concerns him, DHR

could readily be capable of the allegations in this complaint.

III. THE SUPREME COURT OF ALABAMA HAS PREVIOUSLY HELD THAT GOVERNMENTAL AGENCIES AND THEIR EMPLOYEES CAN BE HELD RESPONSIBLE FOR THEIR MINISTERIAL ACTS.

In *Horn v. Dunn Bros.*, 79 So.2d 1 (1955), it is stated, "employees are particularly likely to be subject to suits when they are performing ministerial acts. Freedom from suit is primarily in connection with the discretionary acts of state officials, not their ministerial deeds."

"Injunctive action may be maintained against a state official, if the official is acting beyond the scope of his authority or acting illegally, in bad faith or fraudulently. A state's immunity does not apply when 'officers under a mistaken interpretation of the law acting in the name of the State commit acts not within their authority which are injurious to the rights of others.' Nor does the immunity of the state from suit relieve an officer of the state from responsibility when he acts tortuously on the rights of an individual, or in excess of his authority, even though he acts or assumes to act under the authority and pursuant to the directions of the state." *Wallace v. Board of Education*, 280 Ala. 635, 197 So.2d 428 (1967) (citations omitted). "The essence of the plaintiffs' complaint is that these officers of the State acted fraudulently, in bad faith, beyond their authority, or acted under a mistaken interpretation of the law. Such allegations bring this case within those not protected by Section 14 of the [Alabama] Constitution." *Unzicker v. State of Alabama*, 346 So.2d 931 (1977).

"The juvenile judge, or where there is more than one, the presiding juvenile judge shall exercise executive and administrative authority of the juvenile court. This authority shall include power to employ and supervise the personnel, to initiate and carry on the programs, to assign and distribute the work of the court, to establish and implement policies, and to assign such duties as may be legally delegated. The administrative director of courts (ADC) shall have the authority to fix the character and form of the records." Rules of Alabama Supreme Court, Rules of Juvenile Procedure, Rule 3, Juvenile judge – Administrative authority.

Ala. Code 1975, § 12-15-7(a) states, "The court may appoint one or more probation officers, as otherwise authorized by law, certified by the Department of Youth Services, who shall serve at the pleasure of the court. If more than one probation officer is appointed, one may be designated by the court as the chief probation officer or director of probation services, who shall be responsible for the administration of the probation services under the direction of the court."

The above statutes, Rules of Ala. Supreme Court, Rule 3, Juvenile judge, Administrative authority and Ala. Code 1975, § 12-15-7, spell out and show the administrative authority Judge Larry Mack Smith has over the JPO. It is his job to implement a program where the officers of the court are supervised and do not infringe upon the rights of families. There must be checks and balances and adequate supervision in place to ensure that no one is abused by the system. In all of the affidavits submitted by Larry Mack Smith, JPO Hawk, the chief probation officer, Bill Lovelace, and other personnel in the office, no mention is ever

made of any specific guidelines to ensure proper supervision or safeguards are in place. Not one of the affidavits even suggest that there was any supervision or specifics of any checks and balances in place in the master plan of operation which is in the full and direct control of Larry Mack Smith. No where in any of the petitioners' complaint do they ever make claim against Larry Mack Smith for judicial decisions. The gravamen of the petitioners' complaint is that the officers of the state acted fraudulently, in bad faith, grossly beyond their scope of authority, with total disregard for the Fourteenth Amendment rights of the petitioners. Respondents, Hawk, Staggs, Hamilton, and Poss are liable as the parties who exceeded their rightful authority. Judge Larry Mack Smith is liable for his administrative control or lack thereof by allowing these acts to take place under his direct control and supervision as required by Alabama Law. This legal principle is taught by Tom Monroe of the Alabama Administrative Office of Courts when instructing in operational procedures. Judge Smith must rely on the information presented to him by his staff and if his system is so flawed as to allow his staff to strip the Fourteenth Amendment rights from parents, he must be held accountable.

CONCLUSION

This court should grant this writ and reverse the affirmation of the Supreme Court of Alabama below. The petitioners' parental rights were abridged, usurped, and stripped by the wrongful actions of the employees of the State of Alabama. The Fourteenth Amendment to the Constitution should be upheld as cited by the petitioners.

Respectfully submitted,

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STATE OF ALABAMA – JUDICIAL DEPARTMENT
THE SUPREME COURT
SPECIAL TERM, 2004

(Filed Aug. 16, 2004)

1030818

James Craig Stewart, Sr., and Blanche LeeAnn Stewart v. Larry Mack Smith et al.
Appeal from Lauderdale Circuit Court, CV-03-480

HOUSTON, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a) (1) and (a) (2) (E), Ala. R. App. P.; Ala. R. Civ. P. 12(b); *West v. Founders Life Assurance Co. of Florida*, 547 So. 2d 870 (Ala. 1989); *Ex parte Franklin County Dep't of Human Res.*, 674 So. 2d 1277 (Ala. 1996); *Ex parte Cranman*, 792 So. 2d 392, 405 (Ala. 2000); *City of Bayou La Batre v. Robinson*, 785 So. 2d 1128, 1133 (Ala. 2000); and *C.C. & J.. Inc. v. Hagood*, 711 So. 2d 947 (Ala. 1998).

Lyons, Johnstone, Harwood, and Woodall, JJ., concur.

IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, ALABAMA

JAMES STEWART, SR., et al.,

Plaintiffs,

v. **CV-2003-480**

LARRY MACK SMITH, et al.,

Defendants.

FINAL ORDER

(Filed Jan. 16, 2004)

This matter was presented to the Court on Motions to Dismiss filed by all Defendants. A hearing was held on said Motions on November 14, 2003. In light of the factual arguments being made at the hearing, the Court decided to treat the Motions as Motions for Summary Judgment and advised all parties of that decision. All parties were given an opportunity to submit affidavits in support of and in opposition to said Motions. An Order was subsequently entered to that effect which also stated that the Court would consider the affidavits and enter an Order.

The Court had now considered the Motions and all matters submitted in support of and in opposition to said Motions for Summary Judgment. After consideration of same, this Court concludes that there is no genuine issue of material fact and all Defendants are entitled to a Judgment as a matter of law.

It is therefore **Ordered, Adjudged and Decreed** that Summary Judgment be and the same is hereby entered in favor of the Defendants in this case on all claims of the Plaintiffs and this cause is hereby **dismissed with prejudice.** Costs are taxed as paid.

Entered this 15th day of January, 2004.

/s/ Daniel B. Banks, Jr.
Circuit Judge

IN THE CIRCUIT COURT OF
LAUDERDALE COUNTY, ALABAMA

JAMES STEWART, SR., et al.,

Plaintiffs,

v.

CASE NO. CV03-480

LARRY MACK SMITH, et al.,

Defendants.

ORDER

(Filed Nov. 18, 2003)

On November 14, 2003, a hearing was held on all pending motions in this case. At the hearing, the attorneys and parties were presenting to the Court statements of fact to support their respective positions. After consideration, the Court advised the parties and attorneys that the pending motions to dismiss would be treated as motions for summary judgments due to the factual nature of their respective positions. Attorneys for Defendants Larry Mack Smith, Elizabeth Hawk, Amanda Staggs and Mary Hamilton were directed to file, within 10 days of this hearing, affidavits to support their position. Plaintiffs were directed to file opposing affidavits within 10 days thereafter. Defendant Poss's Motion to Dismiss was filed with an affidavit. Plaintiffs were directed to file opposing affidavits within 10 days of this hearing.

Upon receipt of the supporting and opposing affidavits, this Court will rule on the Motions.

Entered this 14th day of November, 2003. The Clerk of Court is directed to forward this Order to all Attorneys and Plaintiffs.

/s/ Daniel B. Banks, Jr.
Daniel B. Banks, Jr.,
Circuit Judge (Ret.)

IN THE JUVENILE COURT OF
LAUDERDALE COUNTY, ALABAMA

IN THE MATTER OF:	)	
JAMES CRAIG STEWART JR.,	)	CASE NO.:
Minor Child	)	JU-01-000266

ORDER

(Filed Aug. 10, 2001)

It is hereby ORDERED, ADJUDGED AND DECREED that the Sheriff of Lauderdale County, Alabama is directed to send a deputy with the Guardian Ad Litem to the residence of James Craig Stewart Sr. to maintain peace, dignity, and order while the Guardian Ad Litem removes from the residence the Minor Child's personal clothing and personal items. The Guardian Ad Litem is directed to remove the following personal and clothing items from the residence of James Craig Stewart Sr. Birth Certificates, Social Security Card, Immunization Records, Drivers License, Clothes & Shoes, Luggage, Music Cds, Television, Personal Memorabilia i.e. Trophies, Piece of Goal Post etc.

DONE this 10th day of August, 2001.

/s/ Larry Mack Smith
Larry Mack Smith
Circuit Judge

xc: Sheriff
James Craig Stewart, Sr.
460 St. Johns Avenue
Florence, Alabama 35630

IN THE SUPREME COURT OF ALABAMA

[SEAL]

September 17, 2004

1030818

James Craig Stewart, Sr. and Blanche LeeAnn Stewart v. Larry Mack Smith et al.
(Appeal from Lauderdale Circuit Court: CV-03-480).

ORDER

IT IS ORDERED that the application for rehearing filed in this cause is overruled.

Application for Rehearing Overruled. No Opinion.

HOUSTON, J., – Lyons, Johnstone, Harwood, and Woodall, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 17th day of September, 2004

/s/ Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

IN THE JUVENILE COURT OF
LAUDERDALE COUNTY, ALABAMA

IN THE MATTER OF: JAMES CRAIG STEWART JR., Minor Child	)))	CASE NO.: JU-01-266

EMERGENCY MOTION FOR ORDER CONCERNING RETRIEVAL OF CHILD'S CLOTHING & PERSONAL PROPERTY

COMES NOW the Minor Child in the above styled cause by and through his attorney of record, and moves the Court to enter an order directing the Sheriff of Lauderdale County, Alabama, to send a deputy with the Guardian Ad Litem to the residence that he shared with his parents to maintain peace, dignity, and order while the Guardian Ad Litem removes from the residence his personal clothing and personal items;

1. The Minor Child was sent to live with his Grandmother on or about August 3, 2001. Prior to his being sent to live with his grandmother the Minor Child had left the residence that he shared with his parents. Because the Minor Child's departure from the residence that he shared with his parents was somewhat hurried, he did not have the opportunity to gather his clothing and personal effects.

2. The Minor Child desires to have the Guardian Ad Litem return to the residence that he shared with his parents to retrieve his clothing and personal effects. The Minor Child, however, is afraid his parents will not allow him to remove his personal items from the residence and that a confrontation with his parents will result from his efforts to do so. In an effort to avoid any problems that

might result from the Minor Child's retrieval of the aforementioned clothing and personal property, the Minor Child request [sic] that a deputy from Lauderdale County Sheriff's Department accompany the Guardian Ad Litem to the residence that he shared with his parents while the Guardian Ad Litem removes his personal property.

3. The Minor Child has requested that a deputy sheriff accompany the Guardian Ad Litem to the residence that he shared with his parents, but has been informed that such assistance cannot be given without an order from this court.

4. The following is a list of the personal and clothing items that the minor child will need in order to gain entry into public school and maintain himself while living with his grandmother in Mississippi:

A.) Birth Certificate
B.) Social Security Card
C.) Immunization Records
D.) Drivers License
E.) Clothes & Shoes
F.) Luggage
G.) Music CDs
H.) Television
I.) Personal memorabilia i.e. Trophies, Piece of Goal Post etc.

WHEREFORE, the Minor Child asks this court to enter an order directing the Sheriff of Lauderdale County, Alabama, to send a deputy with the Guardian Ad Litem to the residence that the Minor Child shared with his parents to maintain peace, dignity, and order while the Guardian Ad Litem removes from the residence the Minor Child's personal clothing and personal items. The Minor

Child asks for any additional or different relief this court deems appropriate.

/s/ Jamy B. Poss

Jamy B. Poss (POS010)
Guardian Ad Litem
330 W. Tennessee St.
Florence, Al 35630
(256) 760-1002

A Status Report on Implementation of the R.C. Consent Decree

December 2003

Ivor D. Groves Ph.D.
Monitor
R.C. vs. Fuller

Human Systems and Outcomes, Inc.
2107 Delta Way
Tallahassee, Florida 32303-4224

* * *

Display 6 provides a comparison of the percentage of staff within the counties that were over standards in 2002, as compared to 2003. This display highlights the trend within the previous year of a growing number of workers within counties having caseloads over standards, in that, higher proportions of a county's child welfare staff have caseloads over court-specified standards. As the display indicates, in January 2002, 36 of Alabama's 67 counties (or 58% of all counties) had 20% or less of their staff over caseload standards. Having 20% or less of staff over court-specified standards falls within the range of caseload variability typically accepted by the monitor. During this same timeframe, there were ten counties having 40%-80% (or 37% of all counties) of their staff over caseload standards. However, in comparison, in October 2003, only 25 counties had 20% or less of their staff over standards with 25 counties having 40%-80% of their staff over standards, indicating that currently there are more counties having larger proportions of staff over caseload standards than at the beginning of 2002. This is also evident in the increases of counties having R.C. workload levels greater than 100%,

as in January 2002, 11 counties had combined R.C. workload levels at greater than 100%, yet by October 2003, this increased to 22 counties.

Concern regarding this trend of a growing number of workers over standards in converted counties was raised by the monitor in the 2003 Status Report on Implementation of the R.C. Consent Decree and was subsequently raised in a letter to Commissioner Fuller dated May 27, *2003*. In that report, it was stated:

> *. . . There appears to be a trend in the data discussed above that does raise concerns regarding sustainability. Listed, these trends are: staff reductions in converted counties, the increasing number of converted counties that have R.C. workloads greater than 100%, and the anecdotal claims of previously converted counties not receiving the same intensity of services as those counties that have either recently achieved conversion or are still in the conversion process. In addition, there have now been reductions in converted counties of contracted dollars and flex dollars. It is difficult, if not impossible, for workers to consistently meet the expectations of practice as specified by R.C. if their workloads are continually over standards. Similarly, caseloads within standards is one of the benchmark measures utilized by the monitor to ultimately determine if a county is in compliance with R.C. As a result, there are growing numbers of indicators regarding a converted county's capacity to sustain the level of practice achieved at the point of conversion.*

* * *

Display 11
Counties Having Notable Increases in the Number of Children in Out-of-Home Care Since Year of Conversion

County	FC During Year of Assertion	# in FC in 2003	% Increase Since Assertion	Per Capita FC at Assertion	2003 Per Capita FC
Bibb	21 (1998)	32	52%	3.6	6.1
Cleburne	22 (2002)	36	63%	6.4	10.5
Crenshaw	10 (1999)	11	10%	2.6	3.3
Geneva	14 (1998)	49	250%	2.1	7.9
Lamar	14 (2001)	24	71%	3.9	6.4
Lauderdale	82 (1999)	102	23%	3.7	5.0
Lowndes	15 (1998)	26	24%	3.0	6.4
Marengo	12 (1999)	17	42%	1.5	2.6
Marshall	46 (1998)	114	148%	2.2	5.6
Marion	13 (2001)	26	100%	1.8	3.7
Montgomery	200 (1997)	303	51%	3.1	5.3
St. Clair	28 (1998)	72	157%	1.6	4.4
Shelby	39 (1996)	119	205%	1.5	3.2
Tuscaloosa	135 (1998)	263	95%	3.0	6.8
Walker	73 (1998)	110	51%	3.9	6.6
Total	724	1,304	80%	2.66	5.88
Jefferson	525 (1996)	1,105	110%	2.9	6.3
Mobile	353 (1996)	638	80%	2.9	6.3

Findings from the recent Monitor's Reviews

In 2003, the monitor has completed on-site reviews in Etowah and Mobile Counties and conducted on-site analysis activities in Talladega and Randolph Counties. All of these counties had asserted conversion, yet, plaintiff's attorneys objected to their respective assertions for a number of reasons within each county. Although the monitor determined each of these counties to be converted, it was further stated that due to increases in staff turnover and reductions to services due to budget constraints, it was not likely that Mobile County would sustain converted practice. Furthermore, based on the findings in Etowah County, it was determined that the county was compliant at the time of its assertion but was not sustaining converted practice at that time.

The court monitor participated in six on-site county reviews in collaboration with the Family Services Partnership's Office of Quality Assurance during the latter half of 2003. The court monitor conducted reviews in Mobile County, the West region of Jefferson County, Cullman County, Etowah County, Dallas County, Calhoun County, Dekalb County, and Escambia County and has participated as an adjunct reviewer in several of the sustainability reviews during 2003. The most striking overall finding of these reviews was that the counties that were working

* * *

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State of Alabama Unified Judicial System
Administrative Office of Courts
Family Court Division

Fax Memo

Wednesday, December 05, 2001

To:	Mr. Jim Stewart	256.766.5363
From:	Tom Monroe, Juvenile Services Manager Family Court Division	334.242.2099
Subject:	Access to your son's files	

Attached is a copy of *Code of Alabama* 1975, § 1215-100 (a). I have underlined the portion that applies to your situation. It covers both the court record (yellow legal file in the circuit clerk's office) and the probation services record (juvenile probation officer's "social file"). You have the right to "inspection and copying," but inspection may be supervised and there will be fees for copying.

TM

Attachment: 1 page

Code Of Alabama 1975
Title 12. Courts
Chapter 15. Juvenile Proceedings
ARTICLE 5 RECORDS, FINGERPRINTS
AND PHOTOGRAPHS

§12-15-106. Filing and inspection of records, etc.

(a) *Social, medical, and psychiatric or psychological records, including reports of preliminary inquiries and predisposition studies, of delinquent, in need of supervision*

and dependent children, including supervision records of such children, shall be filed separate from other files and records of the court and shall be open to inspection and copying, only by the following:

(1) The judge and probation officers and professional staff assigned to serve the court.

(2) Representatives of a public or private agency or department providing supervision or having legal custody of the child.

(3) Any other person or agency that the juvenile court determines, after a hearing has a legitimate interest in the case or in the work of the court.

(4) The probation and other professional staff assigned to serve a criminal court, including the prosecutor and the attorney for the defendant, for use in considering the sentence to be imposed upon a convicted person, or one adjudicated a youthful offender, who, prior thereto, had been a party to the proceedings in court.

(5) The probation and other professional staff assigned to serve a criminal court when investigating or considering youthful offender applications.

(6) *The parent of the child, except when parental rights have been terminated, or guardian and the counsel and the guardian ad litem of the child.*

(7) The principal of the school in which the child is enrolled, or the representative of the principal, and other school officials as the principal deems necessary, upon written petition to the juvenile court setting forth the reasons why the safety or welfare, or both, of the school, its students, or personnel, necessitate production of the

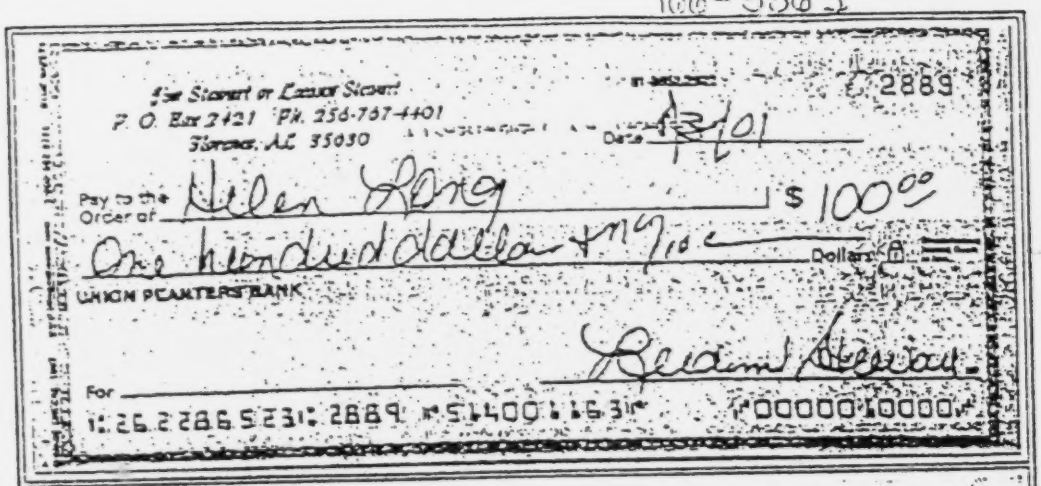
information and without which the safety and welfare of the school, its students, and personnel, would be threatened.

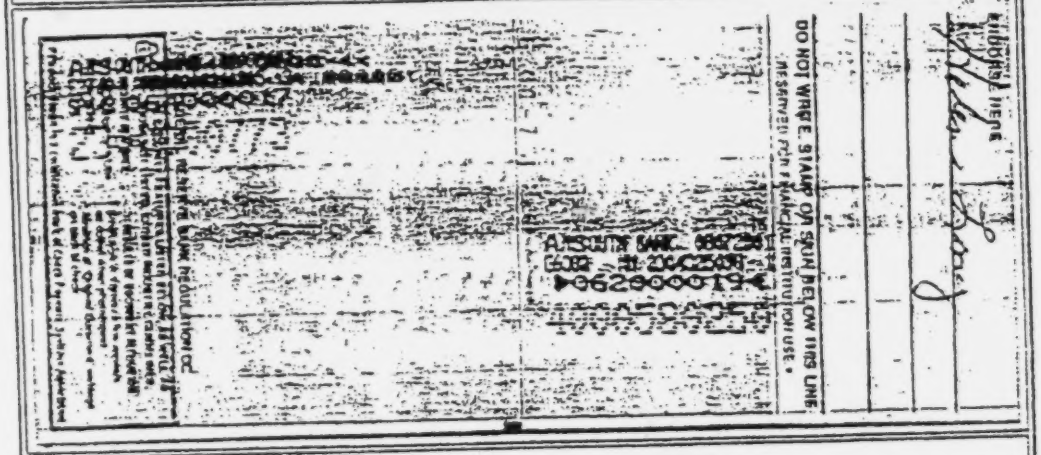
(b) All or any part of the records enumerated in subsection (a) or information secured from the records, when presented to and used by the judge in court or otherwise in a proceeding under this chapter, made available to the parties to the proceedings and their counsel and representatives.

(c) All other court records, including the docket, petitions, motions, and other papers filed with a case, transcripts of testimony, findings, verdicts,

* * *

Attn Jim Stewart
766-5363





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Secondary Check	
Secondary Account	
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Supreme Court, U.S.
FILED
JAN 28 2005
OFFICE OF THE CLERK

No. 04-827

In The

Supreme Court of the United States

JAMES CRAIG STEWART &
BLANCHE LEEANN STEWART,

Petitioners,

v.

LARRY MACK SMITH, ELIZABETH HAWK,
Alabama Department of Human Resources,
MARY HAMILTON, AMANDA STAGGS, & JAMY POSS,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Alabama

SUPPLEMENTAL BRIEF

JAMES CRAIG STEWART
BLANCHE LEEANN STEWART
460 St. Johns Avenue
Florence, Alabama 35633
(256) 767-4401

Petitioners Pro Se

SUPPLEMENTAL BRIEF FOR PETITIONERS

This Court was clear and unambiguous in *Hope v. Pelzer,* 536 U.S. 730 (2002), in stating when immunity can and cannot be afforded to States, their agents, and agencies. It is stated that the petitioners' allegations must be held as true, plead a cognizable violation to the Constitution, and the respondents should have reasonably have been expected to know that their acts were in violation of a clearly established constitutional or statutory right.

First, the petitioners' allegations, when accepted as true, do plead a cognizable violation of the Constitution. The allegations are that the respondents usurped the parental rights of the petitioners as guaranteed under the Fourteenth Amendment to the Constitution. The guarantee of these parental rights has been clearly established on numerous occasions by this Court, including but not limited to, *Lassiter v. Dept. of Social Services,* 452 U.S. 18 (1981), *Quillon v. Walcott*, 434 U.S. 246 (1978), *Wisconsin v. Yoder,* 406 U.S. 205, 231-233 (1972), *Stanley v. Illinois*; supra, *Meyer v. Nebraska,* 262 U.S. 390, 399-401 (1923), *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944), and *Cleveland Board of Education v. LaFleur,* 414 U.S. 632, 639-640 (1974).

The respondents should have reasonably been expected to know that their acts were in direct conflict with the Fourteenth Amendment to the Constitution. These respondents include child welfare caseworkers who deal with parental and children's rights regularly, an attorney, and a probation officer who works under the direct control and supervision of the juvenile court judge. This group should very readily be aware of their actions and the Constitutional provisions. So, yes they could be reasonably

expected to know their acts were in direct violation of the petitioners' Fourteenth Amendment rights.

Finally, the acts of the respondents were intentional and malicious. *Santosky v. Kramer,* 455 U.S. 745 (1982), states "Due process requires that the State support its allegations by at least clear and convincing evidence." Refer to the affidavit of Rodney Slusher reproduced at App. 1 of this brief wherein he states "I can state categorically that I informed the Lauderdale County DHR that Mr. And Mrs. Stewart had made arrangements for their son, Craig, to attend the Millersburg Military Academy and any statement to the contrary is simply not true." This statement, along with the previously submitted cancelled check reproduced at App. 18 of the original brief filed with this Court shows there was no reason whatsoever to have a Guardian Ad Litem appointed, much less clear and convincing evidence to request the Emergency Motion for Order Concerning Retrieval of Child's Clothing & Personal Property (App. 8, 9, 10 of original filing with this Court), and the subsequent Order (App. 6 of the original filing with this Court). With the respondents having been shown to have prior knowledge of the parents' Constitutionally protected rights, they proceeded intentionally and with malice to usurp the rights of the petitioners. With a valid Court Order outstanding and the refusal of the respondents to allow a hearing, the petitioners lost custody of their child without any due process. Had the petitioners attempted to retrieve their son and his belongings, they would have been held in contempt of court and arrested.

Throughout these proceedings from the original trial court to the present, the respondents have made no effort to refute the allegations of the petitioners. The only defense they have ever presented is that they should be

immune from suit. The petitioners have shown with clear and convincing evidence that jurisprudence of this Court states they are not entitled to immunity.

CONCLUSION

For the foregoing reasons, and for those in the petition, the petition for writ of certiorari should be granted. In granting the writ, the judgment of the Supreme Court of Alabama should be vacated and the case remanded to the trial court for a trial by jury.

Respectfully submitted,

JAMES CRAIG STEWART
BLANCHE LEEANN STEWART
460 St. Johns Avenue
Florence, Alabama 35633
(256) 767-4401
Petitioners Pro Se

AFFIDAVIT

Before me, the undersigned authority, personally appeared Rod Slusher, who, being first duly sworn, doth state as follows:

My name is Rod Slusher and I have been a practicing attorney in Florence, Alabama, since 1974. I have personal knowledge of the facts hereinafter stated in this Affidavit.

Sometime in mid to late Summer, 2001, I was contacted by Mr. and Mrs. Jim Stewart to advise them of their rights with respect to their son, Craig. At the time, Craig was a student at a military school in Virginia. Eventually, I had a telephone conversation with a female employee of the Lauderdale County Department of Human Resources about Craig Stewart. This conversation took place in early August, 2001.

In my telephone conversation with the female DHR employee, whose name I do not recall at the time, I informed said employee that Mr. and Mrs. Stewart had made arrangements for Craig to travel from the Virginia military school to his grandmother's house in Mississippi. I further informed the female DHR employee that the Stewarts had made arrangements for Craig to be enrolled at Millersburg Military Academy in Kentucky and that Craig was to remain at his grandmother's house for two weeks and then he would be taken to Millersburg Military Academy to enroll there as a student for the upcoming school year.

Prior to my telephone conversation with the Lauderdale County DHR representative in early August, 2001, I believe DHR had issued a pickup order for Craig. However, after I informed the DHR representative that Craig

was to remain temporarily with his grandmother before proceeding to Millersburg Military Academy as a student, the lady said she would have Mr. or Mrs. Stewart sign a document to release the pickup order which had been issued relative to Craig. After some discussion, the lady said she would have the document delivered to the Stewart residence. This was done and Mrs. Stewart signed the document releasing the pickup order for Craig.

I now understand the DHR says that it has lost the document signed by Mrs. Stewart relative to the pickup order and is disavowing any knowledge that it was told about the Stewart's arrangements for Craig to live with his grandmother temporarily for two weeks prior to enrolling as a student at Millersburg Military Academy for the 2000/2001 [sic] school year. I can state categorically that I informed the Lauderdale County DHR that Mr. and Mrs. Stewart had made arrangements for their son, Craig, to attend the Millersburg Military Academy and that any statement to the contrary is simply not true.

/s/ Rodney B. Slusher
Rodney B. Slusher

Sworn and subscribed before me this the 19th day of December, 2001

/s/ June McKinney
Notary Public